

*Law Offices of  
Susan G. Kellman  
25 Eighth Avenue  
Brooklyn, New York 11217*

*Telephone: (718) 782-8200*

*Tel fax: (718) 783-8226*

*e-mail: [kellmanesq@aol.com](mailto:kellmanesq@aol.com)*

*Fellow, American College  
Of Trial Lawyers*

May 29, 2012

**Via ECF and Facsimile: (718) 613-2386**

The Honorable Allyne R. Ross  
United States District Judge  
United States District Court  
221 Cadman Plaza East  
Brooklyn, NY 11201

Re: United States v. Frank Cook  
10 CR 473 (S-5)(ARR)

Dear Judge Ross:

Counsel has read the government's letter opposing the defense request for a multiple conspiracy charge. We do not disagree on with the government's recitation of the law. Indeed, it has long been the law in the Second Circuit, "that where the proof is susceptible to the inference that there was more than one conspiracy, the question of whether one or more than one conspiracy has been established is a question of fact for a properly instructed jury." U.S. v. Maldonado-Rivera, 922 F.2d 934, 962 (2d Cir. 1990). See also United States v. Orozco-Prada, 732 F.2d 1076, 1086 (2d Cir.), cert. denied, 469 U.S. 845, 105 S.Ct. 154, 83 L.Ed.2d 92 (1984)(in which the jury was given a multiple conspiracies charge); United States v. Bagaric, 706 F.2d 42, 63 n. 18 (2d Cir.), cert. denied, 464 U.S. 840, 104 S.Ct. 133, 78 L.Ed.2d 128 (1983); United States v. Alessi, 638 F.2d 466, 472 (2d Cir.1980).

The government's argument is essentially that in some cases, judges have held, based on the evidence presented at those particular trials, that a multiple conspiracies charge is not appropriate. Clearly, the government has one view of the evidence and we have another. At this point in the trial, however, is too early to foreclose the possibility that the proof presented will be susceptible to the inference that there was more than one conspiracy. For this reason, we believe it was appropriate for Mr. Savitt to submit a Proposed Multiple Conspiracies charge to the Court.

Accordingly, we respectfully request that the Court withhold judgment on the appropriateness of this charge until the close of the evidence, at which time an informed determination on the merits will likely reveal itself.

Respectfully submitted,

*Susan G. Kellman*

Susan G. Kellman  
Sarah Kunstler

cc: Carter Burwell, Esq.  
Asst. United States Attorney

Richard Tucker, Esq.  
Asst. United States Attorney

All Defense Counsel

Frank Cook